

**Supplemental Letter of Findings Number: 01-20150385  
Adjusted Gross Income Tax  
For Tax Years 2009-2014**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

### **HOLDING**

HVAC Contractor did not meet the qualifications for the research and expense credit, therefore the issue of whether it meets an exception to the qualification is moot.

### **ISSUE**

#### **I. Adjusted Gross Income Tax—Research Credits.**

**Authority:** IC § 6-8.1-5-1; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers protest that they do not qualify for an exception to receiving the research and development tax credit, and therefore should be allowed the credit.

### **STATEMENT OF FACTS**

Husband and Wife ("Taxpayers") are shareholders of an S-Corporation ("S-Corp") incorporated and operating in Indiana. The S-Corp fabricates and installs HVAC systems for both commercial and residential properties. In 2013, Taxpayers employed a consulting firm to conduct a Research and Development Tax Credit Study ("Study") determining whether they were eligible to claim certain Indiana research tax credits. Taxpayers' consultants ("Consultants") based their study on several items of information including statements made by the executives of the business, contracts, drawings, calculations, and employee's W2s. Taxpayers' research credit amounts were claimed based upon employee wage expenses only and no other costs were claimed. Taxpayers' filed amended returns for the years 2009 through 2014 to reflect the results of the Study.

In 2014, the Indiana Department of Revenue ("Department") conducted an audit for those years. During the audit, the Department determined that Taxpayers failed to show it qualified for the research and development tax credit and to provide substantial contemporaneous documentation to show that the employees conducted "qualified research" thus, denying Taxpayers' claim for the Indiana research expense tax credit.

Taxpayers protest the Department's disallowance of the Indiana research credit. An administrative hearing was conducted during which Taxpayers' representatives explained the basis for the protest. Letter of Findings 01-20150385 ("LOF") was issued denying Taxpayers' protest. Taxpayers timely filed a request for rehearing, a rehearing was held, and this Supplemental Letter of Findings ensues. Additional facts will be provided as necessary.

#### **I. Adjusted Gross Income Tax—Research Credits.**

### **DISCUSSION**

As a threshold issue, it is the taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayers protest that the Department erred in stating that, "Taxpayer provided no argument as to why it does not meet the [research after commercial production begins] exception. Thus, Taxpayer's protest for this exception is deemed waived." Taxpayers provided its original protest letter which stated that it is protesting the audit results, including that it meets the exception of research after commercial production begin.

While the Department did not address the issue in the prior LOF, Taxpayers did protest the issue and therefore, was granted a rehearing. The LOF determined that Taxpayers did not qualify for the research and expense credit under either the 2001 or 2004 federal regulations. Thus, whether the Taxpayers meets an exception to the research and expense credit is moot.

### **FINDING**

Taxpayer's protest is moot.

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